

**Letter of Findings: 01-20200071  
Individual Income Tax  
For the Year 2016-2017**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Individuals demonstrated that the proposed assessments were incorrect because they were not Indiana residents.

### ISSUE

#### **I. Individual Income Tax–Domicile.**

**Authority:** IC § 6-3-1-12; IC § 6-3-2-1; IC § 6-8.1-5-1; *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); [45 IAC 3.1-1-22](#) (2017); [45 IAC 3.1-1-22.5](#) (2017).

Taxpayers protest the imposition of Indiana individual income tax.

### STATEMENT OF FACTS

Taxpayers are a couple who lived in Illinois prior to the 2014 tax year. At that time, Taxpayers bought a home in Indiana, obtained Indiana driver's licenses, and registered vehicles in Indiana. Taxpayers also began filing returns as Indiana residents. Shortly thereafter, the State of Illinois performed a residency audit and determined that Taxpayers had not abandoned their previous domicile and were still residents of Illinois. Taxpayers filed amended Indiana returns based on this finding by Illinois. The Indiana Department of Revenue ("Department") reviewed these returns and determined that Taxpayers were Indiana residents for the 2016 and 2017 tax years and thus owed additional Indiana individual income tax based on a W-2 showing significant Indiana source income. Taxpayers protested the Department's determination of residency and the imposition of tax, interest, and penalty. An administrative hearing was held and this Letter of Findings results. Any additional facts will be provided as necessary.

#### **I. Individual Income Tax–Domicile.**

### DISCUSSION

Taxpayers believe that they correctly relied on findings by the State of Illinois to file amended IT-40 Indiana income tax returns and that they should only be taxed in Indiana based on an apportionment of income earned while working in Indiana.

As a preliminary matter, a taxpayer is required to demonstrate that the assessment is incorrect. IC § 6-8.1-5-1(c). A taxpayer must provide verifiable documentation explaining and supporting its challenge to the Department's assessment. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax on the adjusted gross income of every Indiana resident. IC § 6-3-2-1(a). Pursuant to IC § 6-3-1-12, a resident "includes [] any individual who was domiciled in this state during the taxable year." In other words, a person owes tax on their adjusted gross income if they were domiciled in Indiana during the tax year.

In 2017, the Department revised its regulations, clarifying the definition of a person's domicile for Indiana income tax purposes. These revisions also allow for more considerations in determining a person's domicile, which generally benefits a taxpayer when his domicile is in dispute. This final determination thereby applies these new regulations accordingly.

[45 IAC 3.1-1-22](#) (2017) defines domicile as follows:

- a) "Domicile" means a person's domicile is the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. **A person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state. A person is domiciled in Indiana if he or she intends to reside in Indiana permanently or indefinitely and to return to Indiana whenever he or she leaves the state.**
- b) A person is domiciled in a state or other place until such time as he or she voluntarily takes affirmative action to become domiciled in another place. **Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.**
- c) **In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a permanent place of residence at that place. The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**
- d) There is no one (1) set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the totality of facts, supported by objective evidence, in each individual case.

(Emphasis added).

Thus, a new domicile is not necessarily created when an individual moves to a new location. Instead, the individual must move to the new location and have an intent to remain there indefinitely.

[45 IAC 3.1-1-22.5](#) (2017) further outlines the factors in determining a person's domicile, as follows:

- a) The department may require documentation from a person to evaluate domicile.
  - b) The one hundred eighty-three (183) day and permanent place of residence threshold in IC [§] 6-3-1-12(b) and [\[45 IAC 3.1-1-21\]](#) is not a test for domicile.
  - c) **A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and the person did more than one (1) of the following:**
    - (1) Claimed a homestead credit or exemption or a military tax exemption on a home in that state.
    - (2) Voted in that state.
    - (3) **Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state.**
    - (4) **Claimed a benefit on the federal income tax return based upon that state being the principal place of residence.**
    - (5) Had a place of employment or business in that state.
- A person may rebut this presumption through the presentation of substantial contrary evidence.**
- d) If a person's domicile is not resolved by subsection (c), the department may consider additional relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:
    - (1) maintained a driver's license or government issued identification card;
    - (2) was registered to vote;
    - (3) registered a vehicle;
    - (4) **claimed as dependents immediate family members who relied, in whole or in part, on the taxpayer for their support;**
    - (5) **assigned or maintained a mailing address;**

- (6) maintained bank accounts;
- (7) maintained active membership in a religious, social, cultural, or professional organization;
- (8) received professional services; and
- (9) kept valuables or family heirlooms.

This list of additional, relevant factors is not exclusive.

**(Emphasis added).**

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. Mr. Walton lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, Mr. Walton did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

*Id.* (Internal citations omitted)(**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

**"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."**

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

*Id.* (Internal citations omitted)(**Emphasis added**).

The Indiana Supreme Court subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence. . . .

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

*Id.* at 1317-18 (Ind. 1988)(**Emphasis added**).

The Department's assessment was based on a W-2 reporting mostly Indiana source income. Taxpayers have explained that this original W-2 was based on their incorrect belief that they had become residents of Indiana. Upon learning that the State of Illinois considered them residents, Taxpayers had this W-2 amended and provided a letter from the employer, explaining that the original W-2 was based on their original belief of Indiana residency. Days before the hearing in this case, Taxpayers obtained the new, amended W-2 and provided it in support of their position.

Taxpayers also provided the Department with a letter from the State of Illinois explaining that they were Illinois residents during the tax years at issue. During those years, Taxpayers only spent 50-60 days a year in Indiana. They spent the plurality of their time in their Illinois home, which they maintained during the tax years. Taxpayers also claimed dependent children on their returns who lived and went to school in Illinois.

Given the totality of the circumstances, the Department agrees that the Taxpayers were not domiciled in Indiana for 2016 and 2017 because their supporting documentation overcame the presumption established under [45 IAC 3.1-1-22.5\(c\)](#).

Since Taxpayers demonstrated that the Department's proposed assessment of income tax is not correct, the penalty and interest issues are moot.

#### **FINDING**

Taxpayers' protest is sustained.

July 31, 2020

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An [html](#) version of this document.